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May 21, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 5, 2007

Case Number: TSO-0575

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the individual's suspended access authorization should not be restored.

I. *BACKGROUND*

The individual is a Department of Energy (DOE) employee. The DOE granted him an access authorization in June 2000. The DOE suspended the individual's access authorization over two security concerns that it detailed in its October 2, 2007, Notification Letter to the individual. First, the DOE alleged that the individual "has an illness or mental condition of a nature which, in the opinion of a licensed clinical psychologist, causes, or may cause, a significant defect in his judgment or reliability." See 10 C.F.R. § 710.8(h) (hereinafter Criterion H). In its Notification Letter, the DOE found that:

1. A DOE consultant-psychologist evaluated the individual in June 2007 and concluded that he meets the *Diagnostic and Statistical Manual of Mental Disorders, IVth Edition TR* (DSM-IV TR) criteria for Depressive Disorder Not Otherwise Specified, Impulse Control Disorder Not Otherwise Specified, Rule Out Attention Deficit Disorder, and Rule Out Cognitive Disorder Not Otherwise Specified.¹ These are illnesses or mental conditions which cause, or may cause, a significant defect in judgment or reliability;

¹ The DOE also found that on July 10, 2007, a National Nuclear Security Administration (NNSA) psychologist recommended that the individual not be certified for the Human Reliability Program (HRP), 10 C.F.R. Part 712, because the individual "appears to have a serious neurological condition that will require close monitoring and appropriate management by medical professionals." I find that the NNSA psychologist's findings are consistent with the findings of the DOE-consultant psychologist, but are

2. On April 23, 2007, the individual voluntarily admitted himself to a local hospital, and stated, "I got suicidal";
3. A local mental health clinic diagnosed him as suffering from Depressive Disorder Not Otherwise Specified; and
4. The individual's psychotherapist diagnosed him as suffering from Adjustment Disorder.

Enclosure 2, October 2, 2007, Notification Letter.

Second, the DOE suspended the individual's access authorization because it alleged that he "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security." 10 C.F.R. § 710.8(l) (hereinafter Criterion L). Specifically, the DOE found that:

1. On April 19, 2007, the individual and his wife were arguing. The individual was "holding her shoulders, man-handling her." A local police officer was dispatched to their home; and
2. On May 25, 2007, the individual and his wife had argued for two days, which escalated to "physical abuse." A local police officer was dispatched to their home.

The individual requested a hearing to respond to the DOE's security concerns, which I conducted on February 28, 2008. An attorney represented the individual. The individual testified and called the following witnesses: his wife, his marriage therapist, his medication provider and his former co-worker. The DOE counsel presented the testimony of the DOE-consultant psychologist.

The hearing testimony focused on the individual's efforts to mitigate the DOE's security concerns by showing that he has recovered from his mental illnesses and that he has repaired his relationship with his wife.

II. *HEARING TESTIMONY*

A. *The DOE-Consultant Psychologist*

The DOE-consultant psychologist evaluated the individual in June 2007. Hearing Transcript at 19. The evaluation consisted of a variety of psychological tests, including

focused on the requirements for HRP certification. *See* 10 C.F.R. § 712.11. I therefore will rely on the medical recommendations of the DOE-consultant psychologist with regard to the determination concerning the individual's eligibility for access authorization.

the Minnesota Multiphasic Personality Inventory, the Conditional Reasoning Test of Aggression and a Personality Assessment Inventory. She also conducted a comprehensive review of the individual's medical records. *Id.* at 19-20. The DOE-consultant psychologist diagnosed the individual with two disorders defined in the DSM-IV TR: depressive disorder not otherwise specified and impulse control disorder not otherwise specified. *Id.* at 32-33.

The DOE-consultant psychologist diagnosed the individual with depressive disorder not otherwise specified because the individual reported having a depressed mood, occasional tearful episodes, suicidal thoughts, feelings of worthlessness, trouble sleeping, loss of energy and a lack of interest in activities. In addition to feeling demoralized, the individual was at a loss to explain what was happening to him. *Id.* at 33.

The DOE-consultant psychologist also diagnosed the individual with impulse control disorder not otherwise specified because the individual had "several episodes" of "serious assaultive acts" involving his wife. *Id.* at 24, 34.

Although the DOE-consultant psychologist did not diagnose the individual as suffering from attention deficit disorder, she did state that the individual reported features of that disorder. The DOE-consultant psychologist needed more information to either make that diagnosis or rule it out. *Id.* at 25-26, 35.

The DOE-consultant psychologist believes that the individual's mental illnesses cause or may cause a defect in his judgment and reliability. *Id.* at 37.

The DOE-consultant psychologist stated that the individual is aware of his mental illness and is receptive to treatment. In order to recover from his illnesses, the individual must have twelve months of adequate recovery and stabilization. The individual's features of attention deficit disorder and the unknown effects of a brain injury add to the complexity of his condition, and contribute to the DOE-consultant psychologist's recommended minimum recovery time. *Id.* at 40, 54. The individual's recovery should include individual therapy, marital therapy, a lack of physical aggression, and an improvement in anger management. *Id.* at 39, 41.

B. The Individual

The individual has worked at a DOE facility since June 2000 and holds a DOE security clearance. *Id.* at 207. He married his wife in July 2005. *Id.* at 211. The individual suffered a head injury in August 2005. He accidentally hit his head on a concrete overhang, which sprained his neck and left shoulder. *Id.* at 211-12. Over the rest of 2005 and into 2006, the individual fell "into a depression" that "gradually" grew "worse and worse." *Id.* at 213. By the summer of 2006, the individual had less patience with his wife. His "fuse was very short" and consequently, the arguments with his wife "became much more heated." *Id.* at 214.

The individual and his wife saw a marriage therapist for a time in 2006. The individual and his wife mutually decided to stop seeing the marriage therapist because they were not following the therapist's advice. *Id.* at 217-19. By March 2007, the individual and his wife were "[v]ery distant" and did not "enjoy[] being around each other." *Id.* at 219. On April 19, 2007, they were "yelling at each other." The individual left the house to go to work. The individual's wife called the police. When the individual came home after work, the wife had left to stay with her family for a three-week "cool-down period." *Id.* at 220-23.

On April 23, 2007, the individual self-reported to a hospital because he "wanted to talk to someone" and stayed for three days. During his three days at the hospital, he saw a psychiatrist, nurses and social workers. A doctor prescribed Zoloft and Depakote to treat his depression. The individual followed the doctor's prescribing instructions. The individual had "occasional" thoughts about death, but was not suicidal. *Id.* at 224-27.

The individual acknowledged that during a May 25, 2007 argument, he hit his wife on the leg after she kicked him. He testified that this physical abuse was "my fault" and that he should have "walked away" after she kicked him. *Id.* at 245-46.

After the May 2007 incident, the individual saw his marriage therapist individually. The marriage therapist referred him to a clinic that specializes in treating the brain. The clinic conducted tests and determined that the individual suffered "head trauma," which may have contributed to his mental illnesses. *Id.* at 228-32.

After reading the clinic's report, the individual's marriage therapist referred him to a medication provider who could manage the individual's medications. The medication provider took him off Depakote and tripled his Zoloft dosage, which gradually improved the individual's mood. *Id.* at 235-36. The individual intends to stay on his medication. *Id.* at 241.

The individual's marriage therapist recommended that the individual reconcile with people he alienated when he fought with his wife: a family friend and his mother, father, brother and sister in-law. The individual apologized and reconciled with each. *Id.* at 237-38.

Following the marriage therapist's advice has improved the individual's marriage, which is now "wonderful." Their faith and raising their daughter have also increased their happiness. The individual and his wife no longer fight. *Id.* at 239-40.

The individual stopped regular treatment with his marriage therapist in October 2007. *Id.* at 270. However, the individual continues to meet with the marriage therapist every three months, although his wife does not accompany him. *Id.* at 254.

C. The Individual's Wife

The individual's wife testified that the individual's behavior changed markedly following his August 2005 head injury. His patience shortened, he lost interest in his favorite hobby, and he became depressed. The individual and his wife became very frustrated. In response, in 2006 they began seeing the marriage therapist, but stopped because they were not following his instructions. *Id.* at 157-58, 160-61.

By the end of 2006 and into 2007, the individual and his wife fought so often that their marriage was "rocky." In April 2007, the individual showed a heightened "flash of anger" that "scared" the individual's wife. She then called the police, fulfilling previous threats to do so, and then sought refuge with her family. She stayed there almost a month. *Id.* at 158, 160, 165, 168-69.

In May 2007 the individual and his wife had another heated argument. They yelled at each other. The individual's wife kicked the individual, who then punched her thigh. The police arrived. For the next two weeks, the individual's wife stayed with a friend, her pastor and at a hotel. *Id.* at 170-73.

The individual and his wife began seeing the marriage therapist again shortly after the wife returned home and they have followed his instructions. The individual has not had an angry outburst in the nine months following treatment, up to the date of the hearing, including an eight-month period when he stayed at home full-time. The individual has been "great" – he has been "happy" and has "had patience" with his wife. She "see[s] a big change in him with [their] daughter and [herself]. . . ." *Id.* at 175, 182, 185-86, 189.

D. The Individual's Marriage Therapist

The marriage therapist is a psychologist who treated the individual and the individual's wife from April through June of 2006. *Id.* at 55, 57-58. During this period, both the individual and his wife had "a pattern" of "significant verbal escalations." They ended their therapy in 2006 without resolving their pattern. *Id.* at 59-60.

The marriage therapist saw the individual again after the altercations that he had with his wife in April and May of 2007. *Id.* at 61. (The individual's wife joined the therapy sessions soon thereafter. *Id.* at 64.) The individual had intense anger and regret over the altercations. He was aware that he "crossed" an unacceptable "physical boundary with his wife." *Id.* at 63. First, the marriage therapist helped the individual and his wife reconcile. Second, the marriage therapist counseled the individual to reconcile with his friend and his in-laws. Third, the marriage therapist helped the individual learn to manage his anger. *Id.* at 72-73.

The individual and his wife "did a very good job of facing their traumatic episodes. . . . [T]hey indeed did work through those." The individual's wife began to trust the individual again. *Id.* at 71. The individual and his wife learned to "communicate

effectively and appropriately.” They arrived at “a place where everything was out in the open and dealt with.” *Id.* at 73.

The individual “humble[d] himself” and apologized to his friend and his mother-in-law “and other family members associated.” The individual repaired those relationships. Moreover, through communicating more effectively with his wife and forgiving his friend and in-laws, the individual “let go of [his] anger.” *Id.* at 72-73.

The marriage therapist does not believe that the individual and his wife need ongoing marriage therapy. *Id.* at 77. The individual and his wife show a “remarkable transformation.” *Id.* at 91. As a result, today the individual and his wife are of “no greater risk than anybody else of having marital problems.” *Id.* at 84. They terminated therapy in October 2007, upon the marriage therapist’s suggestion. *Id.* at 79.

However, also at the marriage therapist’s suggestion, the individual continues to meet with him periodically as “a precaution.” *Id.* at 92. The individual has never missed an appointment with the marriage therapist and has complied with the marriage therapist’s instructions. *Id.* at 73-74.

In addition to the DOE-consultant psychologist’s diagnoses of depressive disorder not otherwise specified and impulse control disorder not otherwise specified (which the marriage therapist does not dispute), the marriage therapist previously diagnosed the individual with adjustment disorder, with the “stressor” being marital issues and the head injury. *Id.* at 86. An adjustment disorder does not necessarily cause a significant defect in judgment or reliability. In any case, the marriage therapist does not now believe that individual has an adjustment disorder. *Id.* at 97-98.

The marriage therapist stated that the individual must be “stable” for at least one year to show adequate recovery from his mental illnesses. The marriage therapist calculated a one-year period from when the individual began his post-altercation treatment, around May 2007. The marriage therapist also recommended that the individual undergo “further assessment” and a “neuropsych report.” *Id.* at 93-94.

E. The Individual’s Medication Provider

The individual first met with the medication provider² in June 2007, upon the marriage therapist’s referral, to treat his anger (with medication, but not psychotherapy). She reviewed the individual’s report from the head injury clinic, discussed his reactions to the medication that the hospital provided him, and diagnosed him with depressive disorder not otherwise specified. She adjusted his medication and met him again in July 2007, October 2007 and January 2008. The individual has always taken his medication and has not missed an appointment with his medication provider. *Id.* at 123, 125-26, 129.

² The medication provider is an advanced practice registered nurse, board certified. She prescribes medication under a psychiatrist’s supervision.

The medication provider has not observed any depressive symptoms in the individual since July 2007. She does not believe that he is depressed, nor does she believe that he needs further therapy. He is not a danger to himself or other people. *Id.* at 130-31, 136.

The medication provider has not observed the individual exhibit symptoms of impulse control disorder. However, she does not dispute that diagnosis because she has only limited access to the individual's history: she is aware of only one impulsive episode and she has not seen the individual's extensive history of the last fifteen years that the DOE-consultant psychologist used in making her diagnoses. *Id.* at 133-34.

Lastly, the medication provider does not believe that he has an illness or mental condition which may cause a significant defect in his judgment or reliability. *Id.* at 153.

F. The Individual's Former Co-worker

The individual's former co-worker is a retired federal agent of twenty-six years. The individual and the individual's former co-worker worked very closely from 2000 to 2005. They still have contact at least once a month through their mutual membership at a local lodge. The individual's former co-worker has received training to detect behavior aberrations in his co-workers. The individual's former co-worker never noticed problems of anger, mood or depression with the individual, either when they worked together or since. *Id.* at 104, 105, 108, 110, 113.

G. Additional Testimony From the DOE-Consultant Psychologist

The DOE-consultant psychologist provided additional testimony after listening to the testimony summarized above. She noted the individual's "impressive," "admirable," and "genuine . . . efforts toward rehabilitation. . . ." *Id.* at 263. She said that the individual's "crisis is over. It is stabilized." *Id.* at 287.

However, the DOE-consultant psychologist believes that the individual still warrants diagnoses of depressive disorder not otherwise specified and impulse control disorder not otherwise specified. *Id.* at 263-64. She still believes that the individual has "an illness or mental condition of a nature which may cause [a] significant in judgment or reliability." *Id.* at 276.

To resolve this condition, the DOE-consultant psychologist still believes that the individual's rehabilitation should include six months of individual weekly therapy for each diagnosis, or twelve months therapy. *Id.* at 270-71, 277, 283-84. The facts that the individual exhibited "mood instability" and "temper problems" prior to his head injury, that his impulse control disorder is intermittent in nature, and that he shows features of attention deficit hyperactivity disorder, also support a twelve-month treatment schedule. *Id.* at 271-73, 285. In addition, the individual's head injury is a "wild card" that he should address with a neuropsychological evaluation. *Id.* at 272. In any case, his treatment regime of individual therapy from May to October 2007, and once every three months thereafter is "not . . . enough." *Id.* at 270.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing (Case No. VSO-0005)*, 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS

A. Criterion H

Diagnoses

The DOE consultant-psychologist and the marriage therapist agree that the individual suffers from depressive disorder not otherwise specified and impulse control disorder not otherwise specified. However, the medication provider did not agree with those two experts. She disputed the diagnosis of depressive disorder not otherwise specified (but not impulse control disorder not otherwise specified). Although she did not specifically state that the individual does not currently fit the diagnosis for that disorder, she did say that she does not believe he is depressed and that he does not need further therapy.

On the issue of whether the individual continues to suffer from depressive disorder not otherwise specified and impulse control disorder not otherwise specified, I was convinced by the diagnoses of the DOE-consultant psychologist and the marriage therapist. I believe they have comparatively greater insight: the DOE-consultant psychologist made the depressive disorder not otherwise specified diagnosis using a greater number of

analytical tools than the medication provider used. The opinions of the DOE-consultant psychologist and the marriage therapist were based on more information than the medication provider had. Further, the marriage therapist was better situated than the medication provider to evaluate the individual at the time of the hearing because he treated the individual with psychotherapy; whereas the medication provider only prescribed medication.

Rehabilitation

The individual presented evidence to mitigate the DOE's Criterion H security concern regarding the two mental conditions. The record indicates that he has shown remarkable insight, has taken responsibility for his recovery and has sought significant treatment. The DOE-consultant psychologist and the individual's marriage therapist both noted his efforts in their testimony.³

Despite these efforts, the individual has not sufficiently recovered from his illnesses to mitigate the DOE's security concerns. The DOE-consultant psychologist testified that the individual must undergo at least twelve months of weekly individual therapy and marriage therapy, while the marriage therapist testified that the individual must show a period of twelve months' stability. Both recommended that the individual undergo a neuropsychological evaluation. Assuming that the individual began treatment immediately following his May 25, 2007, altercation with his wife, at the time of the hearing, he could have had only nine months of treatment and stability.⁴ Because the individual has not yet had a year of stability and treatment, as the DOE-consultant psychologist and the marriage therapist recommended, I find that the individual has not mitigated the DOE's Criterion H security concern. *See, e.g., Personnel Security Hearing (Case No. TSO-0401)*, 29 DOE ¶ 82,990 at 86,677 (2006) (Hearing Officers properly give much deference to the expert opinions of psychiatrists and other mental health professionals regarding the mitigation of concerns related to mental conditions.).

B. Criterion L

The Criterion H security concern is closely intertwined with the Criterion L security concern. That is, the individual's mental illnesses were a direct cause and/or significant factor in his altercations with his wife. Because I find that the individual has not adequately recovered from his mental illnesses, I find that he has not mitigated the DOE's Criterion L security concern.

³ The individual's former co-worker testified that he never noticed problems of anger, mood or depression with the individual, either when they worked together or since. However, I gave the former co-worker's testimony little weight because his closest contact with the individual was between 2000 and 2005 – before the individual experienced his worst symptoms.

⁴ At the time of the hearing, the individual had not yet had the opportunity to treat his illnesses for twelve months. Therefore, I need not evaluate the sufficiency of the treatment the individual did have in the nine months between his May 2007 altercation and the February 2008 hearing.

V. CONCLUSION

For the reasons set forth above, the individual has not mitigated the DOE's Criterion H and Criterion L security concerns. Therefore, I find that the individual's access authorization should not be restored.

The individual may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: May 21, 2008